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ABSTRACT

Analyses of the Brown decision often overstate its importance. For centuries before it was handed down, white Americans regarded blacks as inferior. During the time of slavery, white men (including those of apparent stature, such as Jefferson and Lincoln) felt that for some reason society could do to black people that which it could not do to any other major group. This cruel rationale lay behind the exalted Emancipation Proclamation (which, contrary to popular belief, permitted slavery to continue in some regions in West Virginia), and was furthered by the "separate but equal" doctrine of Plessy v. Ferguson. Historically, white Americans have valued advanced learning, and yet they once made it a crime for a black person to read and write. Racial integration, as promoted by the Brown decision, cannot be a panacea for America's problems. Integration must be accompanied by respect for pluralism, for ethnic and racial diversity, and for the de-escalation of hatred and racial polarization. Above all, integrated education must be quality education. It must be adequately funded and must lead to real jobs. (KH)

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THE ROOTS OF SEPARATE AND UNEQUAL:

THE VIRGINIA AND WEST VIRGINIA HERITAGE

17th to 20th CENTURY

Honorable A. Leon Higginbotham
Judge, U.S. District Court, Philadelphia

Presented at the Symposium celebrating Brown v. Board of Education Supreme Court Decision of 1954 (Institute, WV, February 10-11 and April 11-13, 1984).

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The Roots of Separate and Unequal: The Virginia and West Virginia Heritage - 17th to 20th Century

The Honorable A. Leon Higginbotham
Judge, U.S. District Court, Philadelphia

Mr. Long, Dr. Cole, ladies and gentlemen. I have had many fascinating introductions over the years, this is the first one which I think a very, very subtle hint and what it is, is that if you want to get me or someone else appointed to the Supreme Court, you should support Jim Long for president.

I am delighted to be at West Virginia State. It is a legend in it's time. As I was saying to Dr. Cole at breakfast this morning, when I grew up in Trenton, I never heard anyone discuss Yale, where I subsequently went, or Harvard or the University of Pennsylvania, where I subsequently taught. I heard of great schools, of Lincoln, Fisk, Howard, Morehouse, and above all, West Virginia State. And, what has impressed me over the years is that I have met many very talented individuals, who had their roots there and I am delighted to be here at this college and to see your outstanding president again, and so many of my good friends.

There is a story told about a Philadelphia lawyer who went to heaven, if you can imagine a Philadelphia lawyer going to heaven. And when he got there, he was asked to describe what was the most significant event in his life. He started to describe the Johnstown flood and he went on to say how the river had peaked, the damage to the trees, the damage to the houses, and since everyone was listening rather attentively, lawyers can't resist attentive audiences, he went on and on and on and then finally Moses arose. And Moses said, "Well, counsel, it is interesting about the Johnstown flood, but I think that you should know that Noah is in the audience." As I look out on this program and as I look at the people in the audience I do know that you have some Noahs. I don't know whether Bob Carter is still here but I can recall my first year at Yale Law

School, where a professor who sort of adopted me and was my mentor in many ways, had clerked for Justice Black of the United States Supreme Court. He got me an opportunity to have a seat at the Supreme Court with the justices' clerks in the case of McLaurin v. Oklahoma being argued, which was one of the key cases before Brown. Establishing the fact that a state could not segregate at the graduate school level where students were admitted to their schools. It was a thrilling experience. Over the years Oliver Hill has been one of the great giants in developing American jurisprudence. I hope that some of the young people here will get a chance to talk to individuals like Oliver and Jack Greenberg, who have made such an extraordinary contribution and to Bob Carter.

Some years ago Jack Kennedy wrote a great book, before he was president, Mr. Long. It was called Profiles in Courage. It is fascinating, because it talks about senators who went against the grain, and congressmen who went against the grain of their constituency. They took positions for the overall public interests even though they knew that they might ultimately lead to their defeat and they were Profiles in Courage. But, today as we look at what's happened in America - as we pause here to celebrate the Brown case, or more accurately, to evaluate it. The truth of the matter is that the nation of more than two hundred and twenty five million took probably less than fifty people who played the key and the strategic roll in bringing about the change. The reason I mention this to you before I get into the substance of my remarks and speaking particularly to the young people, it indicates that individuals make a difference and the type of steadfastness and energy and drive, which the Bob Carters and the Jack Greenbergs and the Oliver Hills and the Spottswood Robinsons and my judicial mentor William Hastie and Charles Houston. All of these individuals sat in classrooms the way you are now. They had a dream that America can and must be better, and because of that, they hitched their drives to their dreams. There have been profound differences.

We meet today on the 30th anniversary of the Brown case. And, certainly it is appropriate to assess its impact and significance--both to West Virginia and the entire nation. In America, there will always be disputes about how much progress has been made since Brown. In America, there will always be disputes, as to how far the journey is ahead despite Brown, to have a truly egalitarian society. Egalitarian, not merely in theory, but more so in results--but whatever the debates which you might hear--it is significant that this university be commended. Because the highest calling of a great university has to always be, to review our past with rigor, and to thereby provide a realistic prospective by which the present can be understood, and the future anticipated and molded.

Some of you may be familiar with the old lines of George Santayana, if I may rephrase some--"that he who does not know the lessons of history will be doomed to repeat its worst mistakes." And thus I applaud you for this assessment, but this assessment has a couple of very serious dangers. The first one is that we may be looking at the wrong time span. Any ultimate assessment of the success or failure of Brown may depend on how closely one identifies with the persons who control the leaders of power and determine the pace of change, or how closely one identifies with the victims of racism.

Louis Pollock, former Dean of Yale Law School, former Dean of the University Of Pennsylvania Law School and now a Judge in United States District Court, the court in the circuit in which I sit, wrote a fascinating book on the Supreme Court about ten years ago. He, looking at the Brown case with scholarly and professorial detachment said "except for waging and winning the Civil War and World Wars I and II, the decision of the school segregation cases was probably the most important governmental act of any kind since the Emancipation Proclamation." And that is correct, at least as I see it. But, what is the danger of an analysis today? It is if we look at the time frame of only the last thirty years, we will be looking

at it without recognizing that there has been a corridor of history. I submit to you to understand the Brown case, we must understand the race relations near you in West Virginia from the date of its birth as the 35th state in 1863. We must understand America's mentality from almost the first time when a Black man landed in Virginia in 1619. Some might even say to really understand Brown, that one must go beyond the four corners of the pages in the various decisions, that you must probe about the nature of man, and you must ask why is it that a society can at one moment produce a Thomas Jefferson, a James Madison or George Washington, and at the same time produce a system administered through these men which would impose such pervasive cruelties to millions of individuals.

I am not a chemist like your distinguished president but I did have a slight background in science and I was trying to think of what analogy there is that one may want to look at to give as an example of what type of lens should you look at Brown. Often I find an analogy is much more persuasive than a thousand pages. The first analogy I started to explore a bit was epidemiology, a branch of medical science that deals with the problems of disease in a population, and I started to compare the culture of slavery and racism in America as if it was the equivalent of some dreadful poisoning and often fatal virus. Those of you who are drama majors can imagine how you could carry that analogy on. You could look at nine Supreme Court Justices as if they were Nobel Laureats attempting to create an effective vacine to eliminate the dreadful poisoning and often fatal virus which has engulfed America for so long. You would then say, what is the Brown case? If you would look at if from a chemical standpoint, it was an immunization based on constitutional principles designed to erradicate the violent disease of racism that has afflicted our nation for centuries and so many of our people. Even after thinking of that analogy, I thought there might be a better one and the one which I will try to use with you today is to look at Brown from a botanist's perspective.

Perhaps the Brown case could be described as a new species which the Supreme Court attempted to plant on our American landscape. Its birth in 1954, as the Brown case, was pronounced. It was neither a mighty oak nor a strong redwood or even a beautiful orchard. When the Supreme Court announced that doctrine in 1954, we received at most, a sapling, and 30 years later, we're debating as to why it was not strong enough to make the type of success we would have liked. But what would a botanist say when looking at a sapling planted in the soil. They would first want to analyze the soil, and they would want to explore some of the other related phenomena in it.

When the Supreme Court announced the Brown case, for those of you who have been at the Supreme Court, you know what a magnificient marble palace it is. But, it's more like an isolated green house, where one can experiment with plants, but what was the problem which America had to face? They had the challenge of enforcing the Brown decree, a sapling which would not be in a green house or an antiseptic environment. It was a sapling which had to be planted on American soil, the American soil of Mississippi and Alabama, Virginia and West Virginia, North and South, ocean to ocean. And, that soil has been for more than two and one half centuries, a quagmire, often hostile to the concept of equal justice for Blacks.

To appreciate the analogy, to understand the importance of Brown, we must look at the pre-Brown era, and we must understand what happened in our land when others had attempted to plant ideas for the cause of equal justice for Blacks. We must understand the efforts of the spiritual Quakers, the daring Sojourner Truth, the militant Frederick Douglass, the eloquent William Lloyd Garrison. We must also understand how the tree of liberty was stunted by most white Americans, and tragically, even by the framework of the Declaration of Independence, and how the soil became polluted and toxic, by the likes of John C. Calhoun, Charles

Cotesworth Pinckney, Jefferson Davis and Robert E. Lee. The struggling sapling in the past was kept in perpetual darkness, denying it the sunlight of enlightenment. The twig of liberty seldom got the critical nutrients of rain, moisture, for what we would call justice and equal opportunity.

This morning I would like to look at some discreet facets of the past which exemplify a fragility of the early American environment, which perhaps reveal it toxicness and its unhealthiness. In the early years, the pollution of the American soil, and the denial of sunlight and rain, and the creation of an unfavorable environment. We had caretakers and who were our caretakers? Our caretakers were Jefferson, George Washington, and Patrick Henry.

Now, some in the audience might say, why is this judge up here in 1984, discussing a 1954 case going all the way back to slavery? Isn't this just another example of polarization, of someone speaking to antagonize rather than to bring insight? That's not my purpose. I submit to you that there is a common denominator, that there is a root which remains unchanged between the doctrine accepted by many to justify slavery, and the doctrines that were later articulated to justify the separate-but-equal rationale. The commonality is that during the time of slavery, white men of apparent stature, learning and esteem, felt that for some reason society could do to Black people that which they could not do to any other major group in America. Thus, from 1619 to 1865, they felt they could enslave Black people, yet for them it would have been unthinkable to enslave whites in the 17th, 18th, and 19th centuries. We all know that whites could and did pick cotton. We all know that whites could and did harvest rice. We all know that whites could and did hoe tobacco, and we all know that whites were not enslaved. Why weren't they? In the years I have had the pleasure of teaching, and I have taught at Harvard, at Yale, at the University of Pennsylvania, at

Michigan and Hawaii. Somewhere along the time when I am going over a course on race in the early American legal process, I give the students a hypothetical and on the board I say suppose, suppose that in America you could have had white slaves and that your white slaves for the production unit you want would cost you a hundred dollars per year. And if you had Black slaves it would cost you one hundred dollars per year. In our society who would have been chosen? They always say Blacks and then I play around with the hypothetical and say it would have cost one hundred fifty dollars to have a Black slave and one hundred to have a white slave. So therefore it would be cheaper to have whites performing the labor. Whom would you choose? Never in the almost twenty years I have been teaching have I ever found a substantial majority of the students vote anything other than the fact that Blacks and only Blacks would have been enslaved.

So let us look at the rationale. Because it is so much related to the separate-but-equal doctrine, it is a doctrine and a philosophy that expanded over this nation for centuries--that Blacks could be treated in a fundamentally different and hostile way than the society would ever treat Jews or Catholics, Italians or Irishmen, or any other person whose pigmentation was white or near white. I am fortunate to have friends from a very pluralistic background and I know that many people come to America with hardships, that many people faced great difficulties of economic survival, but there is no group in this country which comes anywhere close to the level of cruelty which confronted Blacks. If you have any doubt about it, let me give you an analogy for a book I wrote. Let me read to you one advertisement which is in that book. It reads as follows:

> A Negro woman, 24 years of age and her two children, one 8 and the other 3 years old. Said Negroes will be sold separately or together, as desired. The woman is a good seamstress. She will be sold low for cash or exchanged for groceries. For terms, apply the Mathew Place.

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Above that I have another advertisement which speaks of 120 Negroes for sale. The subscriber has just arrived from Petersburg, Virginia, with 120 likely young Negroes of both sexes and every description which he offers for sale, on the most reasonable terms, and it goes on to describe them, and it ends with this phrase in bold print, "And several small boys without their mothers." Let us look at that mentality. Anyone who puts an advertisement into a newspaper today, stresses the good points. If you were going to sell an automobile, you say, "A car for sale with automatic transmission, with air conditioning, with power steering." I have never seen anyone say "Car for sale. Brakes don't work. No radio," because what you are trying to do is to get a consumer to become interested, and what does it mean when you read an advertisement? This is typical of thousands and thousands and thousands which are published in your original state of Virginia..."several small boys without their mothers." For some reason the mentality in that society was such, the soil was so polluted, that they were saying that you can destroy a family and that a boy who does not have his mother, for some reason, may be a more valuable product in the market place. Just think of it, the advertisement I read to you, of a woman who had committed no crime, to have her children 3 years old and 7 years old snatched away from her and sold in exchange for some groceries. And, therefore there is a nexus between slavery and the Brown case and that point was argued before the Supreme Court.

There is a magnificient book by Leon Friedman on the Brown case. It is called Argument, and it has verbatim much of the transcript, as the case was argued. At the end of one of Thurgood Marshall's arguments there was this dialog between him and Mr. Justice Frankfurter, who was being too socratic and too professorial in my view. Ultimately Thurgood Marshall, if you read the transcript, says:

> "Why of all the multitudenous groups of people in this country, do you have to single out the Negroes and give them this separate treatment?"

And, that is the core of what was involved in that case and in the hundreds of cases which proceeded it. Let me read to you how Mr. Marshall, then, not Justice Marshall, but Thurgood Marshall, brilliant advocate, concluded his argument that day. He says, speaking of the separate-but-equal doctrine...

> "We charge that they are Black codes, they obviously are Black codes if you read them. They haven't denied that they are Black codes, so whichever way it is done, the only way that this court can decide this case in opposition to our position is that there must be some reason which gives the state the right to make a classification that they can make in regard to nothing else, in regard to Negroes. We submit the only way to arrive at this decision is to find that for some reason Negroes are inferior to all other human beings. Nobody will stand in the court and urge that, and in order to arrive at the decision that they want us to arrive at, there would have to be some recognition over reason. Why of all the multitudenous groups of people in this country do you have to single out Negroes and give them this special treatment? It can't be because of slavery in the past because there are very few groups in this country that haven't had slavery someplace back in the history of their groups. It can't be because there are Negroes as white as the drifted snow with blue eyes, and they are just as segregated as the colored man. The only thing it can be is an inherent determination that the people who were formerly in slavery, regardless of anything else, shall be kept as near that stage as possible. Now is the time, we submit, that this court should make it clear that that is not what our constitution stands for."

I have read the record of the Brown case carefully and I have read the briefs many times. I think that was probably the critical turning point, because he was saying to justices in the United States Supreme Court, "after all that our nation has done in fighting Hitler, after all that we've said in making the world safe for democracy, are you, are you going to come up with a doctrine which is not dissimilar to that which Hitler advocated, that some people under the law are inferior and, therefore can be treated differently? And what is it that we

have to come to grips with, an understanding of that slavery period--it is to look at the Thomas Jeffersons, to look at the Patrick Henrys and say, "Why?"

Thomas Jefferson wrote these magnificient words:

> "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain inalienable rights and that among these are life, liberty, and the pursuit of happiness."

And, how could he at one moment write that eloquent statement to all of mankind about the inherent and natural rights of man and then go on to write this advertisement. On page 477 of my book, there is an interesting footnote, and it says, "Run away from the subscriber in Albemarle a mulatto slave called Sandy, about 35 years of age. His stature is rather low, inclining to corpulance." Now let me just pause here for a moment, students. I want you to recognize what a great writer Thomas Jefferson was, even when doing a slave advertisement. At Yale, we would have said he was short and fat, but not Thomas Jefferson. He says his stature is rather low, inclining to corpulance. What is important on that advertisement is what he says at the end. "Whoever conveys the said slave to me in Albemarle shall have 40 shillings reward if taken up within the county, 4 pounds if elsewhere within the colony and 10 pounds if in any other colony." It is signed with that magnificent scroll--that scroll which appears on the Declaration of Independence, that scroll which appears on the early drafts of the Declaration of Independence and on hundreds of executive orders and decrees and treaties, Thomas Jefferson. That is the ambiguity in the American process, how Thomas Jefferson could sell Sandy, without hesitation, or capture him while at the same time demanding that the King not impose on them taxation without representation.

Perhaps the most famous lines given by any American orator took place in Oliver Hill's hometown. He probably gave the most famous ones, but I haven't read them so I have to look at Patrick Henry. In 1775, on March 23, when he

stood up at the Virginia Convention meeting at St. Johns Episcopal Church, and he said, "Is life so dear, or peace so sweet to be purchased at the price of chains and slavery? Forbid it almighty God. I know not what others may do, but as for me, give me liberty or give me death." He talked in terms of chains of slavery. What he meant was taxation without representation and thus the significance of the Brown case is that it was created by what I call affirmative action. It was created by a society where individuals who were nobel in many respects but cruel in others in terms of the way in which they ran the society. No one captured it better than Dr. Samuel Johnson, criticizing the colonists. He said, "that their logic was too foolish for buffoonery and too wild for madness." Why is it if slavery be thus fatally contagious, that we hear the loudest yelps for liberty among the drivers of Negroes?

Now, I do have an article in the current issue of The West Virginia Law Review, where I spent a lot of time looking at what happened in West Virginia, and thus for the moment I would like to pass that. But West Virginia which broke off from Virginia during the Civil War, has one of the most interesting and fascinating and I might say, contradictory histories one could come up with because West Virginia refused to secede from the Union. When you look at West Virginia, you get another aspect of why it has been so difficult to get the tree of freedom passed. I guess it is a concept of gradualism. You see most school children are told that Abraham Lincoln freed the slaves. He authored the Emancipation Proclamation. That is not a precisely accurate statement. Abraham Lincoln freed some of the slaves. He freed the slaves in the states where there was a continuous rebellion, but as you read the Emancipation Proclamation, you will see that he makes a specific exception as to certain counties in West Virginia. So what do we have as the great irony in American history? Slavery was permitted to be continued in West Virginia after it had been abolished in all of the states which

had seceded--that is abolished by Abraham Lincoln's Proclamation. And what was it that West Virginia did? They passed a statute which took effect on July 4, 1863. This statute is fascinating for many reasons--because it's a gradual emancipation statute and in my article in The West Virginia Law Review, I've got lots of footnotes and details on it, but what it was, that if you are over 21 years old, you would not be freed. If you were between 10 and 21, you would not immediately be freed, and if you were 10 years old, it would be 15 years before you could become free. So West Virginia, which has this image for liberalism really was an extraordinary state. It broke from Virginia. It articulated a lot of liberal statements, and then it imposed by statute. I'm quoting you a statute, ladies and gentlemen, an emancipation process which would have taken 25 years for some people, and thousands of slaves would never have been freed. So what is it that happened in West Virginia? It is that slavery continued here, and Abraham Lincoln had a lot of dialogue with your leaders saying you must at least get a gradual emancipation statute, but slavery was not abolished in West Virginia. The 48 counties which constituted West Virginia until the 13th Amendment was passed in December of 1865. I mention that to you because as I read what I submit, in all due respect, is often far too romantic to comment on the state of West Virginia. It is that you weren't as good as you claim to be, and the statutes of your state proves that you weren't.

Now let us get past the West Virginia situation. What is the other thing one must understand in terms of the importance of Brown? You know, in America we speak in terms of the, of the importance of education. That's why all of you young people are here. You hear it day in and day out, of education as the passport to excellence. Education is the way under which one moves ahead. What was it that you had in Virginia and West Virginia during the days of the 1800's? It was an absolute commitment to ignorance, vigorously enforced. And what was it

that was feared most? Now let me read to you, and I found that when I spoke at West Virginia University some people started challenging me, so I will give you lawyers' citation. If you look at chapter 120, title two, it was a statute passed March 14, 1848. What was it that Virginia passed a law on? It says, "Any white person who shall assemble with slaves, free Negroes or mulattos, for the purpose of instructing them to read or write, shall be punished by confinement in jail." Now think about this a little bit, ladies and gentlemen. When some people saw Kunta Kinte have his leg amputated, they reacted with shock and horror and said what a cruel act. That was not a crime. In fact, one could argue that under the law it was an act of mercy, because they could have cut off both legs, both arms, could have castrated him, could have killed him, because he had the greatest nerve anyone would want, he wanted to steal his own body and go into freedom. And, that was a crime. He could be killed, anything could happen. But crime for the Black, no crime for the person who would kill him, no crime for the person who would amputate his legs. But what is it his master could do which would be a crime, which would make it something for imprisonment? To teach him how to read and write. And the reason why Brown has to be so important is that Brown is an effort by the courts to say that everyone will have an opportunity to read and write and get an absolute equal education. As one goes through the statutes it is just fascinating to look at them. Virginia, as an example in 1838, if a free Black left the state, let me read to you the precise words of the statute, "for the purpose of being educated, he could never come back." What you have is a society with people who created great universities like the University of Virginia who would quote Locke, Hobbs, and Rousseau, and read Shakespeare and Aristotle and Plato, and would make it a crime if a Black person would dare to learn how to read and write. That is the duality and that is the ambiguity in terms of the whole historical process for the things which took place.

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Now that is the history which preceded the Brown case. I will look at only two cases, because lawyers particularly always like cites, in the nation, and in West Virginia. The first case is a case called Martin v. West Virginia. The case came down on April 20, 1897. Opinion written by Justice Dent, I believe. Thomas Martin was an odd person, you know. He wanted his children to get an education. And, he complained that in the district he lived in, in Morgan County, district number 4, a place called Cacapon, that his five children could not get an education and therefore, his children should be admitted to the white school. In this case the West Virginia Supreme Court said, "No." I won't take time to go over what was the distorted logic, what they said was, that it would be a violation of the constitution of the state, and in my mind for very, very substantial extent, they misread the constitution of the United States.

It is a sad thing for two reasons. I do not come to you, ladies and gentlemen, talking to you as some arrogant, northern, federal judge, because if you read a case like the Martin case, you will find that the Supreme Court of West Virginia did not rely on cases from Alabama and Mississippi and Louisiana. Those great bastions of liberal thought. They relied on a case like Roberts v. the City of Boston, the 1855 case out of Massachusetts. They relied on cases such as Ward B. Flood of California and State v. McCann from Ohio and Corey v. Carter from Indiana. All of these cases stood for a proposition, that for some reason, Black children could be subjected to that which no other child was, separation on the basis of race.

So let me take you to one other case which came up the same year when Martin was argued and that's Plessy v. Ferguson. Plessy v. Ferguson was one of the great dark moments in American history. The case argued before the United States Supreme Court in 1896. It involved separation on a Trolley car, whether the state could pass a statute to allow such separation. In the process of the argument, counsel for Plessy said to the court, "but if you would permit Blacks to be separated from

whites on Trolley cars, then the state could separate Irishmen from Italians and Catholics from Protestants" and went on to give a whole parade of parables. Mr. Justice Brown responded in effect by saying "of course they could not do that, because that would be unreasonable to separate blondes from redheads, to separate Irishmen from Italians, to separate Protestants from Catholics, but it is reasonable to separate Blacks from whites." That is again a revelation of how the judicial mind went. It went on to say that we can do that to Black people which we cannot do to anyone else, and that is the core of what the Brown case was designed to deal with. It dealt with creating a new and different vision of America, and it had the temerity to say what Blacks have always known--that Blacks are people. As people they too are entitled to be treated like all of the others. My superb research colleagues Stephanie Franklin-Suber, Margaret Stricklin and Willie Jones, have helped me a great deal on trying to understand what happened in West Virginia and at another time, I hope to have an article which looks at - your unique experience.

I think that now is the time to close. And what is it that I would like to leave you with? It is a recognition that America has been a cruel society, and it is not individuals who ran around with guns on their hip and hoods over their heads who perpetrated the most cruel aspects of our society. It is not the Ku Klux Klansmen...indiduals who passed constitutional doctrines which sanctioned slavery...individuals who passed statutes which say Blacks can't get educated. What it means is that if individuals who are as philosophical as Jefferson, as brave as George Washington, as eloquent as Patrick Henry, can do a lot for the country but also have some terrible blind spots, that we had better look at every American public official, and ask do they have blind spots. And will the high court of history, ladies and gentlemen, look down upon our generation and feel that in some way we have been as cruel and as insensitive as I submit to you now, where the people permitted a woman to lose her children in exchange for groceries.

Now, in looking over the Brown case, I would like to make a couple of points quite clear. What do I think is the greatest tragedy in the analytical process of Brown? I think that it is a syndrome of over-expectations. I started out by comparing the Brown case as a sapling in the forest or perhaps more accurately, the orchard of opportunity. Some might argue that it was the most important specie in the forest but in pushing this forestry analogy, I would submit to you that it is not the only tree in the forest and one should not expect for it to provide all the timber or all the strength that we need for the foundation of a new social system in which the last vestiges of racism and discrimination are eradicated and by which a greater America is built. The greatest danger we face is that too many people expected too much from the Brown case. Even if the decree had been implemented in the wisest and most efficient and most expeditious fashion, it was never the entire orchard or the forest, though it prohibited state imposed segregation and favored racial integration. Nevertheless, racial integration in itself, all by itself, has never been a panacea to solve all of America's problems. There are many other factors which are equally as crucial, if we seek to improve the quality of life for all Americans. One might ask, what does it profit us if all that we end up with is integrated, inferior education where children don't learn, where teachers are not motivated, where schools are uninspiring, and where pupils are demeaned. One might ask, what does it profit us if all that we will have will be integrated schools, but schools that are not adequately funded. And how great is the result, if we have integrated higher education institutions, but which ultimately become too costly for the poor.

At the same time, no jobs for our children to graduate to and no hope for the elderly to get minimum subsistence living. What does it profit us if we have integrated schools, while all around us plants are closing and our towns are sinking fast by the weight of massive poverty. In the final analysis, we must recognize

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that the true forest or orchard of opportunity enclosed the tree of integration, of course, but it also has to be more than mere integration. It means integration plus respect for the pluralism of America, plus respect for ethnic and racial diversity, and the deescalation of hatred and racial polarization. But, above all else, the forest of opportunity means quality education. It means that as exhilarating as it is for a few men to walk in outer space, it is far more critical that every child in our land has the opportunity to get on his or her feet, to become full men and women, able to pursue with dignity the development of their highest potential. Thus, we have to cover a long span in trying to access the Brown case. We have to understand the horrors of the past and remember George Santayano--"that he who does not understand the lessons of history will be doomed to repeat its worst mistakes." We must look at these events, not to denigrate, not to create hatred, but to understand the pathology so that you and I can plant a new forest or a new orchard. And who has described that orchard best? I think it is Langston Hughes. Some years ago he wrote a great poem called "Dream of Freedom." He said:

There's a dream in the land
With its back against the wall
By muddled names and strains
Sometimes the dream is called.
There're those who claim
This dream for theirs alone
A sin for which we know we must atone
Only shared in common like
sunlight and like air.

The dream will die for lack
of substance anywhere
The dream knows no frontier or tongue;
The dream no class or race
The dream cannot be kept secure
in any one locked place.
This dream today embattled
with its back against the wall.
To save the dream for one
It must be saved for all.